IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 18291 of 2007(C)

AGAINST IA.1053/06 IN OS.210/2004 of MUNSIFF COURT,MUVATTUPUZHA
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PETITIONER:

THOMAS, S/. CHAKCO,
PULLAN VEETTIL, KOZHIPPILLY KARA,
VARAPPETTY VILLAGE.

BY ADV. SRI.GEORGE ABRAHAM
SRI.O.K.MURALEEDHARAN

RESPONDENTS:
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1. LINCY GEORGE, W/O. GEORGE,
MALIKUDY VEEDU, KOTHAMAGALAM VILLAGE,
NOW RESIDING AT BEHIND BISHOP HOUSE,KOTHAMANGALAM.

2. GEORGE, S/O. VARKEY,
MALIKUDU VEEDU, KOTHAMANGALAM VILLAGE,
NOW RESIDING AT BEHIND BISHOP HOUSE,KOTHAMANGALAM.

BY ADV. SRI.T.KRISHNAN UNNI
SRI.C.DILIP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

EXT. P1 **TRUE COPY OF THE FIRST COMMISSION REPORT DTD.21.6.04.**

EXT.P2 **TRUE COPY OF THE COMMISSION REPORT DTD.7.2.05.**

EXT.P3 **TRUE COPY OF THE COMMISSION APPLICATION DTD.3.12.05.**

EXT.P4 **TRUE COPY OF THE WORK MEMO FILED BY THE RESPONDENTS.**

EXT.P5 **TRUE COPY OF THE COMMISSION REPORT DTD. 20.3.06.**

EXT.P6 **TRUE COPY OF THE SURVEY PLAN ALONG WITH MEASUREMENT.**

EXT.P7 **TRUE COPY OF THE APPLICATION NO.1053/06 FILED BY THE RESPONDENTS.**

EXT.P8 **TRUE COPY OF THE ORDER IN I.A.1053/06 IN O.S.210/04.**

[True copy]

P.A. to Judge.

M.N. KRISHNAN, J.

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W.P.C. NO. 18291 OF 2007

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Dated this the 16th day of July, 2007.

J U D G M E N T

This writ petition is filed seeking to set aside the order in I.A.1053/06 in O.S.210/04. The said application is one for setting aside the Commissioner's plan and report filed by defendants 1 and 2 in O.S.210/04. A perusal of the order would reveal that PWs.1 and 2 and DWS.1 and 2 were examined and Exts.A1 to A4 and B1 to B9 and C1 to C4(a) were marked.

2. I am informed by the learned counsel for both the sides that the suit was proceeded with when the present application was pending before the Court for setting aside the Commissioner's plan and report. It is to be stated that the said approach made by the Court is erroneous and it should not have been done. When an application for setting aside the Commissioner's plan and report is filed the Court has to necessarily enter into a finding either allowing or disallowing it before proceeding with further trial for the

reason that in case of necessity for a fresh plan and report the Court has to do the same and thereafter only proceed to dispose of the matter. But having reached at this stage I do not further stretch it any more.

3. O.S.81/04 is a suit filed by the first respondent in the writ petition for fixation of boundary and O.S.210/04 is filed by the present writ petitioner for a declaration and consequential injunction. Title deeds relied upon by the first respondent in the writ petition, i.e. the plaintiff in O.S.81/04, are Exts.A1 to A3 and title deeds relied upon by the plaintiff in the other suit O.S. 210/04 are Exts.B1 to B3. Since the suit is one for fixation of boundary as well as for declaration it is imperative that the property has to be identified with respect to the title deeds of the parties and dispose it of. If it is lacking the proper remedy is to get a fresh plan and report with reference to these documents. Therefore, at this stage instead of setting aside the Commissioner's plan and report it is sufficient to remit the matter back to the same Commissioner and he be directed to visit the property, if necessary, with the assistance of a Taluk Surveyor identify

the properties of the respective plaintiffs in O.S. 81/04 and O.S.210/04 with respect to Exts.A1 to A3 and B1 to B3 title deeds and thereafter proceed in accordance with law. If additional particulars are required to be noted by the parties at the time of inspection by the Commissioner, that can also be done by filing work memos before the Commissioner. The order under challenge is set aside and the learned Munsiff is directed to remit the Commissioner's plan and report to the same Commissioner with a direction to the Commissioner to visit the property with the assistance of the Taluk Surveyor and identify the property with reference to the title deeds, Ext.A1 to A3 and B1 to B3 and also by permitting the parties to file work memos before the Commissioner to note about the relevant particulars. Thereafter, both the parties shall file objections, if any, and the matter be tried and disposed of in accordance with law. Both the parties are directed to appear before the Court on 30.7.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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